TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 231.

OLD DOMINION STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED APRIL 24, 1905.

(19,306.)

(19,306.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 231.

OLD DOMINION STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

INDEX.

	Original.	Print.
Petition for appeal and supersedeas	1	1
Order allowing appeal and supersedeas	10	8
Proceedings before the State corporation commission	10	9
Letter of John A. Upshur, clerk, to W. L. Guillaudeu, president, September 2, 1903	11	9
Letter of W. L. Guillaudeu, president, to John A. Upshur, clerk, September 10, 1903	12	10
Statement of facts, &c	13	11
Ruling of commission	15	13
Exceptions to ruling	16	15
Chairman's certificate	16	15
Opinion	18	16
Judgment	23	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 29, 1904.

	Original.	Print
Clerk's certificate	24	18
President judge's certificate	24	19
Assignment of errors	25	19
Petition for writ of error	28	21
Order allowing writ of error	28	21
Bond on writ of error	29	22
Writ of error	31	23
Citation and service	33	24
Return to writ of error	34	24

1 In the Supreme Court of Appeals of Virginia, at Richmond.

OLD DOMINION STEAMSHIP COMPANY
vs.
COMMONWEALTH OF VIRGINIA.

To the honorable judges of the supreme court of appeals of Virginia:

Your petitioner, The Old Dominion Steamship Company, respectfully represents, that heretofore, to-wit: on the first day of September, 1903, it made its report to the State corporation commission of all its property which it was advised was liable to taxation under the laws of Virginia. That it did not include in such report certain steam vessels belonging to your petitioner and hereinafter enumerated because your petitioner not being a resident of the State of Virginia, but a citizen of the State of Delaware and because of said vessels being regularly enrolled under the laws of the United States outside of Virginia and engaged in commerce upon the navigable waters of the country, were not taxable by the State of Virginia; but were only taxable at their home port, to-wit where your petitioner resided and said vessels were enrolled.

That notwithstanding this the State corporation commission
2 heretofore, to-wit, on the 2nd day of September, 1903, insisted that your petitioner should send it a list of the said vessels, which your petitioner did on the 10th day of September, 1903, but under protest and with the request that a day be fixed by the said commission for a hearing of your petitioner. (See page 2, of Record for letter of Sept. 10th, 1903.)

That the 17th day of September was accordingly fixed for said hearing, when such proceedings were had that on the — day of November 1903 the said commission entered an order declaring all of said vessels taxable by the State of Virginia except the steamer Hampton, and proceeded to assess the same for taxation by the said State and also proceeded to locate certain of the said vessels for taxation by the cities of Richmond and Norfolk and the towns of Smithfield and Suffolk and the Hampton school district of Elizabeth City county, all of which will appear by reference to page 6 of the record of the proceedings of the State corporation commission relating thereto, a transcript of which containing all the facts upon which the said action of the commission was based has been certified under the seal of the said commission to this honorable court by the Hon. Beverly T. Crump, chairman of the State corporation commission, and is herewith filed and exhibited.

Your petitioner is advised and represents that the said order and action of the said commission are erroneous and that it is aggrieved thereby in many respects, as will hereafter appear.

It will appear from the record that your petitioner was incorporated by the legislature of the State of Delaware and therefore is not a resident of the State of Virginia. That it is engaged in transporting passengers and freight between certain ports in Virginia and the city of New York and other points outside of Virginia.

In the prosecution of its said transportation business it owns and operates a number of steamboats and other vessel property, namely, the said steamers Hampton, Mobjack, Hampton Roads, Luray, Accomack, Virginia Dare, Brandon, Berkley and the steam tug Germania.

These vessels, with the exception of the last named, visit various ports within the State of Virginia for the purpose of receiving freight for which they issue bills of lading for points outside of the State of Virginia. Owing to the shallow waters where they ply it is impossible for the larger ocean going steamers of your petitioner to be used. They therefore receive the freight as aforesaid, giving the shipper a bill of lading for the same, destined to the port of New York and other points outside of Virginia and bring it to deeper water at Norfolk and Fort Monroe, Virginia, where, upon the
3 same bill of lading the said freight is transferred to one of the larger ocean going vessels of the steamship company, and so the ultimate destination to New York and elsewhere outside of Virginia is reached. That any other business transacted by the said vessels is incidental in character and comparatively small in amount. That the said vessels were built and designed for interstate traffic and that each and all of them were regularly enrolled pursuant to the laws of the United States outside of the State of *the State of* Virginia, with the name and port of enrollment painted on the stern of each of them, that the said vessels, though capable of use on the ocean were then used on established routes upon navigable waters within Virginia as set out in the record. (See page 5.) That said vessels were all held liable by your petitioner to go outside of Virginia upon any of the navigable waters of the United States whenever more profitable employment could be found for them, and *and* that one of the said steamers, to-wit, the Hampton, was at the time of the said hearing actually employed in waters within the State of New York.

It is respectfully insisted on the part of your petitioner that the said vessels being owned by a non-resident and regularly enrolled under the laws of the United States, and engaged in commerce upon the navigable waters of the country are not taxable by the State of Virginia or elsewhere than at their home port. Vessels such as those involved in this proceeding are by congressional legislation peculiarly and especially the subject of Federal law and regulation. Section 4141, U. S. Rev. Statutes, provides as follows:

"SEC. 4141. Every vessel, except as is hereinafter provided, shall be registered by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry; which port shall be deemed to be that at or nearest

to which the owner, if there be but one, or if more than one, the husband or acting and managing owner of such vessel, usually resides."

Vessels engaged in the coastwise trade or on other navigable waters of the United States are, by sections forty-three hundred and eleven (4311) and forty-three hundred and twelve (4312), United States Revised Statutes, enrolled as distinguished from those engaged in foreign trade, which by section forty-one hundred and forty-one (4141) are registered. The qualifications as to ownership and place of enrollment are the same as in case of registration.

Vessels enrolled under this provision become vessels of the United States.

4 "Ships or vessels of ten or more tons burden, duly enrolled and licensed, if engaged in commerce on waters which are navigable by such vessels from the sea, are ships and vessels of the United States, entitled to the privileges secured to such vessels by the act for enrolling and licensing ships or vessels to be employed in the coasting trade. 1 Stat. 205, 287."

Transportation Co. *vs.* Wheeling, 99 U. S., 278.

The place of enrollment so provided by this act is in law the "home port" of the vessel. Owing to the fugitive character of such property, possessed of the power to move at the will of its master anywhere on the navigable waters of the country, and designed for trade whenever the same may be found profitable anywhere upon the broad waters of the United States or elsewhere on the water highways of the world, it became pre-eminently necessary that some particular abiding place should be fixed and declared by law for them. Accordingly Congress has declared that the permanent abiding place of United States vessels shall be the port of enrollment, the port nearest the residence of the owner the home port. Certain characteristics or qualities have been imparted to these vessels by Federal legislation and the admiralty rules of the civilized world. Such for example as giving those who furnish them with supplies in any other than their "home port" a lien on such vessels for such supplies, and again, giving to her master power when she is overtaken by any particular stress of placing a lien upon her which shall be prior to all others, namely, a bottomry bond. Again, we find such property the particular source of national solicitude in the laws enacted by Congress and known as the limited liability act. Congress recognizing the need of building up a merchant marine, but equally appreciating the dangers to which vessels are exposed by reason of their being obliged in the course of their business to visit foreign waters and jurisdictions and become exposed to the dangers of the sea and river navigation, with a view of encouraging the investment of capital in such property, has declared, that the liability of the owners of such vessels for the negligence etc. of their masters shall be limited to the value of the interest of such owner. In a word United States vessels differ in

many essential and material respects from all other personal property, and the rules with reference to the taxation of personal property on land are not a guide to the taxation of ships. If ships could be taxed at any port where they habitually call or where they may trade great uncertainties would arise and injustice result. Hence the Supreme Court of the United States has uniformly held that because of their peculiar nature and employment and because Congress has fixed their "home port" they cannot be taxed as of their actual *situs* but only at their "home ports."

Justice Brewer, in the Pullman Palace Car Company *vs.* Twombly, 29 Fed. 658, 665: speaking of the difference between other tangible property and vessel property said as follows:

"The place where a vessel is registered is by law its home port. That is considered its *situs* * * * An attempt is made to place commerce by land in the same position as commerce by water, and to make in the former case the domicile of the owner equivalent to the port of registry in the latter. But until there has been some legislative declaration of equivalent import the obvious distinction between the two must be enforced and the ordinary rule of the *situs* of tangible property for purpose of taxation be applied to vehicles used in commerce on land."

— Hayes *vs.* Pacific Mail Steamship Company, 17 Howard 596, an effort was made by the State of California to tax certain vessels belonging to the Pacific Mail Steamship Company a corporation duly chartered in the State of New York, where the said vessels were owned and registered. The vessels in this case plied between New York and San Francisco, and between the lat-er port and certain ports in Oregon.

Mr. Justice Nelson, delivering the opinion of the court, after citing the registry acts of the United States above quoted, proceeds as follows:

"These provisions, and others that might be referred to, very clearly indicate that the domicile of a vessel that requires to be registered, if we may so speak, or home port, is the port at which she is registered, and which must be the nearest to the place where the owner or owners reside. In this case, therefore, the home port of the vessel- of the plaintiffs was the port of New York, where they were duly registered and where all the individual owners are resident and where is also the principal place of business of the company, and where, it is admitted, the capital invested is subject to State, county and other local taxes.

"These ships are engaged in the transportation of passengers, merchandise, &c., between the city of New York and San Francisco by the way of Panama and between San Francisco and different ports in the Territory of Oregon. They are thus engaged in the business and commerce of the country, upon the history of nations, touching at such ports and places as these great interests demand and which held out to the owners sufficient inducements, by the profits realized or expected to be realized. And so far as respects

the ports and harbors within the United States they are en-
6 tered and cargoes discharged or laden on board independently of any control over them, except as it respects municipal and sanitary regulations of the local authorities such as are not inconsistent with the constitution and laws of the General Government, to which belongs the regulation of commerce with foreign nations and between the States.

"Now it is quite apparent that if the State of California possessed the authority to impose the tax in question, any other State in the Union into the ports of which the vessels entered in the prosecution of their trade and business, might also impose a like tax. It may be that the course of trade or other circumstances might not occasion so great a delay in other ports on the Pacific as at the port of San Francisco. But this is a matter accidental, depending upon the amount of business to be transacted at the particular port, the nature of it, necessary repairs, &c., which in no respect can affect the question as to the *situs* of the property in view of the right of taxation by the State.

Besides, whether the vessel leaving her home port for trade and commerce visits in the course of her voyage or business several ports or confines her operations in the carrying trade to one, are questions that will depend upon the profitable returns of the business, and will furnish no more evidence that she has become a part of the personal property within the State, and liable to taxation at one port than at the others. She is within the jurisdiction of all or any one of them, temporarily, and for a purpose wholly excluding the idea of permanently abiding in the State, or changing her home port. Our merchant vessels are not unfrequently absent for years in the foreign carrying trade seeking cargo, carrying and unloading it from port to port during all the time absent; but they neither lose their national character nor their home port as inscribed upon their stern.

"The distinction between a vessel in her home port and when lying at a foreign one, or in the port of another State; is familiar in the admiralty law. She is subjected in many cases, to the application of a different set of principles. 7 Pet. 324; 4 Wheat., 488.

"We are satisfied that the State of California had no jurisdiction over these vessels, for the purpose of taxation; they were not, properly abiding within the limits so as to become incorporated with the other personal property of the State; they were there but temporarily, engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid."

The steamboat property of the Old Dominion Steamboat Com-
7 pany, operated as above described, is as clearly engaged in the business and commerce of the country upon its highways as in the case just quoted from. These vessels are neither

owned by citizens or residents of the State of Virginia, nor enrolled or registered in that State.

The record in this case does not show whether the vessels of your petitioner were ac-ually taxed at their home port or not.

It matters not whether they are actually so taxed by the State where their owner resides and they are enrolled. They are *liable* to taxation there and that answers the law.

This was expressly held in Morgan *v.* Parham, 16 Wall., 471. The court says in the case where the State of Alabama was attempting to tax the vessel property of a citizen of New York and registered in New York as follows:

"Whether the steamer 'Frances' was actually taxed in New York during the years 1866 and 1867 is not shown by the case. It is not important. She was liable to taxation there. That State alone had dominion over her for that purpose. Alabama had no more power to tax her or her owner than had Louisiana, or than Florida, Georgia and South Carolina would have had in the case, I have supposed."

Your petitioner is aware that this honorable court in the case of Norfolk and Western Railway Company *vs.* Board of Public Works, 97 Va., 23, has decided, that the fact "that tugs and barges are engaged in interstate commerce does not exempt them from taxation, nor does the place of their enrollment or registration fix their *situs* for taxation, though it is a circumstance to be considered in its determination." It must be observed, however, that that was a case in which the vessel property was owned by a Virginia corporation, and the decision was based on that fact, the court holding that the property belonged to a citizen of the State of Virginia and was therefore taxable in the State where the owner resided. The court might very well have added that the steam tugs and barges of the Norfolk and Western Railroad Company being owned in Virginia were not and could not legally be enrolled at any other port in the United States than that one in Virginia nearest the place of residence of the Norfolk and Western Railroad Company. In a word, if they were enrolled or registered outside of Virginia, being the property of the Norfolk and Western Railroad Company, a Virginia corporation, then such enrollment would have been in express violation of the United States statute, section 4141 U. S. Revised Statute- above quoted. This case is therefore one distinctly in point for your petitioner. The vessel property of the Norfolk and Western Railroad Company was owned in Virginia and only capable under the
8 United States statute of being enrolled at a port within that State. This qualification of ownership and enrollment distinctly obtains in behalf of your petitioner, as it is a non-resident of Virginia, and its vessels are regularly enrolled under the United States statutes referred to. This decision is expressly justified by the utterance of the Supreme Court of the United States in Transportation Company *vs.* Wheeling, 99 U. S. 273. The syllabus of that case is as follows:

"Steamboats which ply between different ports on a navigable river may, under a State statute, be taxed as personal property by the city where the company owning them has it principal office, and which is their home port, although they are duly enrolled and licensed as coasting vessels under the laws of the United States, and all fees and charges thereon, demandable under those laws, have been duly paid."

The State of Michigan has expressly upheld the doctrine contended for by the Old Dominion Steamship Company.

In Roberts *vs.* Charlevoix Twp., 60 Mich. 192, Campbell, J. said for the court that a vessel owned by a non-resident and registered under the United States navigation laws does not, by engaging in business within the State become subject to its taxing power, and ends the discussion by saying:

"This doctrine having been settled by the court of last resort there would be no propriety in discussing it."

The State of Florida has with equal emphasis announced the same doctrine.

In Johnson *vs.* De Bary-Baya Merchants Line, 37th Fla. 499, the court says:

"The vessels were owned by a New York corporation and had acquired a *situs* in that State by being registered in the port of New York, the nearest to the residence of the owner, and were engaged in commerce in that State where, it is conceded, the most profitable employment could be procured for them. The mere fact of being employed in interstate commerce would not exempt them from taxation, and we do not say that registration in a foreign port and non-resident ownership should control absolutely, but such ownership and registration render them primarily and presumptively taxable only in their home port. This is clearly the doctrine of the Supreme Court of the United States—the court of last resort in such a case.

9 The boats of the non-resident corporation were used in the very business for which they were constructed, and they were in Florida waters because they could be more profitably employed there. Some of them were transferred to other fields as profit dictated, and it does not appear that they all might not have been taken away at any time if it had been to the interest of the owner to move them."

The vessels in this case were used in trading on the St. John's river and as adjuncts to the Clyde line, a transportation company engaged in coastwise traffic between Florida and New York. The court in this case speaking further on the subject says:

"All property should in justice pay its proportionate part of tax burdens in return for protection given; but one State should not lay taxes upon citizens of other States unless their property has acquired a *situs* in the taxing locality so as to become a part of the property there situated.

* * * * * * *

"The character of such property is such as to give rise to the just rule under the United States registry acts that it is primarily taxable only at the home port where the owner resides."

Your petitioner respectfully insists that its said vessels are only taxable by the State where it resides and where they are duly registered as United States vessels, just as this honorable court has decided in favor of its citizen- in the Norfolk and Western Railroad *vs.* Board of Public Works, *supra.*

If it were otherwise then your petitioner's vessels would be subject to taxation not only at their home port, the residence of your petitioner, but also wherever they might happen to be employed in trade upon the navigable waters of any of the States of the Union.

It was to avoid this injustice among other things that the wise, if somewhat arbitrary rule was adopted by the United States in fixing the *home*, the permanent abiding place, of such vessels, at the port nearest the place of residence of the owner.

Your petitioner respectfully submits that the action of the commission in holding the said vessels liable to taxation by the State of Virginia is a regulation of interstate commerce by the State of Virginia in violation of and repugnant to article 1, section 8, clause 3, of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes.

Wherefore, and for other reasons herein assigned and appearing upon the record, your petitioner prays for an appeal from the action of the said commission in the several respects hereinbefore
10 set out, and also for a writ of supersedeas to such final action, order and judgment of the said commission, and also that this honorable court may review and reverse the said order and finding of the said commission and enter such order as may be just and right.

And as in duty bound your petitioner will ever pray, etc.

OLD DOMINION STEAMSHIP CO.,
By WHITE, TUNSTALL AND THOM,
Its Counsel.

We, Wm. H. White and Richard B. Tunstall, counsel, practicing in the supreme court of appeals of Virginia, do hereby certify, that, in our opinion, it is proper that the decision and action of the State corporation commission, complained of in the foregoing petition, should be reviewed by this honorable court.

WM. H. WHITE.
RICH'D B. TUNSTALL.

Appeal allowed and supersedeas awarded. But the said supersedeas shall not take effect until the petitioner shall have executed and filed with the State corporation commission a suspending bond, approved by it, payable to the Commonwealth, and sufficient in

amount and security to insure the prompt payment by the said petitioner of any amount for taxes, for which it may be declared liable by the final decision of this court on appeal.

Jan. 29, 1904.

VIRGINIA:

Proceedings Before the State Corporation Commission, Sitting as a Court, at its Offices in the City of Richmond, Virginia, on the 17th Day of September, 1903.

COMMONWEALTH OF VIRGINIA at the Relation of the STATE CORPORATION COMMISSION
vs.
OLD DOMINION STEAMSHIP COMPANY.

In the matter of assessing for taxation the steamships, steam-
11 boats and other floating property of the Old Dominion Steamship Company.

Be it remembered, that heretofore, to-wit: on the first day of September, 1903, in the report made by the Old Dominion Steamship Company to the State corporation commission, of its property, subject to taxation under the laws of Virginia, it omitted certain of its vessels and steamships, to-wit: the steamers Hampton, Mobjack, Hampton Roads, Luray, Accomac, Virginia Dare, Brandon, Berkley and the steam-tug Germania; that on the 2nd day of September, 1903, the clerk of the State corporation commission wrote the president of the Old Dominion Steamship Company calling upon him to send in a list of said vessels, which letter was in the following words and figures, to-wit: That in response to this letter and under protest the Old Dominion Steamship Company answered as follows, to-wit:

RICHMOND, *September 2d*, 1903.

Mr. W. L. Guillaudeu, president Old Dominion Steamship Company, New York.

DEAR SIR: I beg to acknowledge receipt of report made by your company, which will be brought to the attention of the commissioners on their return to Richmond on Monday next. I note that you have not included in this report any of your steamboats engaged entirely in intrastate traffic, such as your James River line, Severn and Ware River line, Suffolk, Smithfield, &c, In order that this matter may properly be placed before the commissioners I would request that a list of these steamers be furnished, together with tug-

boat, floating property in the way of barges, &c., used in Norfolk harbor.

Yours very truly, JOHN A. UPSHUR, *Clerk.*

That in response to this letter, and under protest, the Old Dominion Steamship Company answered as follows, to-wit:

12 NEW YORK, *Sept 10th*, 1903.

John A. Upsher, Esq., clerk to the State corporation commission, Richmond, Va.

DEAR SIR: Your favor of Sept. 2nd. has not been earlier replied to owing to unavoidable absences from the office.

I note that you request that we furnish a list of the "steamboats engaged entirely in interstate traffic, as your James River line, Severn and Ware River line, Suffolk, Smithfield, etc." omitted from the report heretofore rendered by the company.

I beg to say that in no case has the company any vessels engaged entirely in intrastate traffic. On the contrary the establishment and maintainance of these lines is for the purpose of performing interstate business, and they are but subsiduary branches of the main New York and Virginia line.

That they do perform some intrastate passenger and freight business, is of course, true, but incidentally so only, and in a very small proportion to the total business performed by them. It is for this reason that they have been previously omitted, or reported under protest, and while still protesting against their inclusion in the assessment against the company, I comply with your request by enclosing you a list of such property, together with its estimated valuation, as follows:

Steamers, Hampton
Mobjack
Hampton Roads
Luray
Accomack
Virginia Dare
Brandon
Berkley
Steam tug Germania
Seven barges.
Aggregating $207,800.

Should the commission be unwilling to concede that this property is not taxable under the State law, I will thank you to advise
13 me at my New York office of the time when the commission will hear the company on this question.

Awaiting your reply, I remain,

Very respectfully yours,

(S'g'd) W. L. GUILLAUDEU,
President and General Manager."

Accordingly the 17th day of September 1903, was fixed by the State corporation commission for hearing the steamship company. On which hearing the following facts were adduced before the said commission, namely: That the Old Dominion Steamship Company was a non-resident corporation, having been incorporated by the senate and house of representatives of the State of Delaware; that it was then and had been for many years theretofore engaged in the transportation of passengers and freight on the Atlantic ocean and communicating navigable waters, between the city of New York in the State of New York and Norfolk and certain other ports within the State of Virginia. That said steamship company in the prosecution of its said transportation business owned and operated the vessel property above named, that these vessels with the exception of the tug Germania whose movements and use will be hereinafter stated, visited various ports or points within the State of Virginia, for the purpose of receiving freight and passengers, for which they issued bills of lading and tickets to points outside of the State of Virginia: that owing to the shallow waters where these vessels plied it was impossible in most instances for the larger ocean going steamers of the company to be used: that in consequence the vessels above enumerated were used to receive the freight and passengers as aforesaid, giving the shipper of freight a bill of lading for the same destined to New York and other points outside of Virginia, and the passenger a ticket to his destination, and thus transported such freight and passengers to deeper water at Norfolk and Old Point Comfort where, upon such bills of lading and tickets, the passengers and freight were transferred to one of the larger ocean going vessels of the steamship company, and so the ultimate destination, namely New York and elsewhere outside of Virginia was reached; that any other business transacted by the above named vessels was incidental in character and comparatively insignificant in amount; that the said vessels were built and designed for interstate traffic especially and were adjuncts to or
14 branches of the main line of the Old Dominion Steamship Company between New York and Norfolk; that each and all of the said vessels were regularly enrolled, under the United States laws, outside of the State of Virginia with the name and port of such enrollment painted on the stern of each of them; that the said vessels though regularly enrolled and licensed for coastwise trade were then used on old established routes upon navigable waters within Virginia as follows, to-wit:

First. The steamer Hampton Roads between Fort Monroe and Hampton and Norfolk.

Second. The steamer Mobjack between points in Mathews and Gloucester counties and Norfolk.

Third. The steamers Luray and Accomack between Smithfield and Norfolk.

Fourth. The steamer Virginia Dare between Suffolk and Norfolk.

Fifth. The steamers Berkley and Brandon between Richmond and Norfolk; and

The steamers Berkley and Brandon ply between Richmond and Norfolk. These two steamers were completed in the year 1901 or early in 1902, one of them having been constructed at the William R. Trigg ship yard in the city of Richmond, and the other outside of the State of Virginia. Early in the year 1902, they were placed upon the line between Norfolk and Richmond, one steamer leaving Richmond each evening and arriving in Norfolk each morning, thus giving a night trip every night each way between Richmond and Norfolk. At the time these steamers were placed upon this route and since that time, the Old Dominion Steamship Company, has by public advertisement called attention to the fact that these two steamers were especially fitted in the matter of state room accommodations for carrying passengers between Richmond and Norfolk, and the said two steamers have since that time been advertising for the carriage of passengers and freight on their route between Richmond and Norfolk, and have been regularly carrying freight and passengers between the said two points in Virginia as well as taking on freight and passengers for further transportation on their ocean steamers at Norfolk. The Old Dominion Steamship Company applied under the revenue laws of the State of Virginia -or a license to sell liquor at retail on each of these steamers and
15 on July 1st, 1902, there was granted through the commissioner of the revenue of the city of Richmond a license to the Old Dominion Steamship Company for the sale of liquor at retail on each of these steamers, said licenses to expire on April 30th, 1903. On or about the same time, the said steamship company complied with the revenue laws of the United States and paid the necessary revenue tax through the custom house at the city of Richmond for the purpose of selling liquor at retail on each of these steamers. In the spring of 1903, the said steamship company in order to obtain licenses to sell liquor at retail on each of these steamers applied for the same in the city of Richmond and complied with the requirements of section 143 of the new revenue law, approved April 16th, 1903, and so obtained licenses for the year 1903–1904 to sell liquor at retail on each of these steamers on their route between the city of Richmond and Norfolk, and likewise, on or about the same time complied with the revenue laws of the United States in the matter of selling liquor at retail on each of the said steamers on said route.

Sixth. The steam tug Germania, which was used in the harbor of Norfolk and Hampton Roads for the purpose of docking the large ocean going steamers of the Old Dominion Steamship Company and the transferring from different points in those waters freight from connecting lines destined to points outside of Virginia.

And thereupon the said steamship company, by its counsel, insisted that the said vessels, being owned by a non-resident and regularly enrolled under the laws of the United States outside of

the State of Virginia and used as above set out, were not liable to taxation under the laws of Virginia on the ground, among others, that the said taxation was a regulation of interstate commerce by the State of Virginia in violation of and repugnant to article 1, section 8, clause 3, of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes.

And the said State corporation commission took time to consider of their conclusion in the premises and subsequently entered an order declaring all of the said vessels taxable by the State of Virginia except the steamer Hampton and assessing the same for taxation for the year 1903 as follows, to-wit:

Names of Routes and Mileage Over Which the Old Dominion Steamship Company Operates.

From	To	Miles.	From	To	Miles.	From	To	Miles.
A. Norfolk	Old Pt. and Hampton	17						
B. Norfolk	Matthews Co. points	100						
C. Norfolk	Smithfield	27						
D. Norfolk	Suffolk	40						
J. R. Norfolk	Richmond	113						

Total miles operated in Virginia, 297 miles.

Location of property.		Value of all express cars and horses and wagons.	Value of all steamships, steamboats, or other floating property, their machinery and equipments.	Value of all depots, wharves, sheds, offices, stores, docks, machine shops, granaries, elevators, and other buildings.	Value of all real estate and personal property not included in the foregoing classifications.	Value of all miscellaneous property.	Total value of all property.	
County or corporation.	School district.							
		Whole dollars.	*Whole dollars.*	*Whole dollars.*	*Whole dollars.*	*Whole dollars.*	*Whole dollars.*	
Norfolk			72,500.					St'rs "Mob Jack and Accomac," one steam tug and seven barges.
Richmond			200,000.					"Berkley and Brandon."
Suffolk			6,800.					"Virginia Dare."
Smithfield			17,500.					"Luray."
Elizabeth City	Hampton		40.00					"Hampton Roads."
			336,800.					

16 & 17 To which ruling and action of the said commission the said Old Dominion Steamship Company, by counsel, excepts on the ground among others that the said taxation is a regulation of interstate commerce by the State of Virginia in violation of and repugnant to article 1, section 8, clause 3 of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes, and prays that its exceptions may be made a part of the record of this proceeding for the purposes of an appeal which is accordingly done.

NOTE.—It was and is a concession in the case that the seven barges mentioned in the letter of W. L. Guillaudeu to the commission, dated September 10th, 1903, differ from the other vessels herein enumerated in that they are used only in the harbor of Norfolk and not enrolled outside of the State of Virginia and by their construction not capable of ocean navigation.

The chairman of the State corporation commission doth hereby certify to the supreme court of appeals of Virginia that the foregoing contains and sets out all the facts upon which the action of the commission in the matters herein referred to was based, and which are essential to the proper decision of the appeal to be taken from such action, and is also a true transcript of the proceedings had as aforesaid before the commission.

Witness the seal of the State corporation commission and the signature of the Honorable Beverly T. Crump, chairman thereof, this 26th day of January, in the year 1904, and in the 128th year of the Commonwealth.

[State Corporation Commission Seal.]

BEVERLEY T. CRUMP, *Chairman.*

A copy.

Teste: H. STEWART JONES, *C. C.*

18 VIRGINIA:

In the Supreme Court of Appeals, at Richmond, March 17, 1904.

OLD DOMINION STEAMSHIP COMPANY, Appellant,
vs.
COMMONWEALTH OF VIRGINIA, Appellee.

Upon appeal from a finding of the State corporation commission, entered on the — day of November, 1903, declaring the steamers Mobjack, Accomac, Hampton Roads, Luray, Virginia Dare, Brandon, and Berkeley, and the steam tug Germania and seven barges, property of appellant, taxable under the laws of the State of Virginia, and imposing a property tax thereon for the year 1903.

The facts presented by the transcript of the record of the finding aforesaid are as follows:

That the Old Dominion Steamship Company was a non-resident corporation, having been incorporated by the senate and house of representatives of the State of Delaware; that it was then and had been for many years theretofore engaged in the transportation of passengers and freight on the Atlantic ocean and communicating navigable waters, between the city of New York, in the State of New York, and Norfolk, and certain other ports within the State of Virginia. That said steamship company in the prosecution of its said transportation business owned and operated the vessel property above named; that these vessels, with the exception of the tug Germania whose movements and use will be hereinafter stated, visited various ports or points within the State of Virginia, for the purpose of receiving freight and passengers, for which they issued
19 bills of lading and tickets to points outside the State of Virginia; that owing to the shallow waters where these vessels plied it was impossible in most instances for the larger ocean-going steamers of the company to be used; that in consequence the vessels above numerated were used to receive the freight and passengers as aforesaid, giving the shipper of freight a bill of lading for the same destined to New York and other points outside of Virginia, and the passenger a ticket to his destination, and thus transported such freight and passengers to deeper water at Norfolk and Old Point Comfort where, upon such bills of lading and tickets, the passengers and freight were transferred to one of the larger ocean-going vessels of the steamship company, and so the ultimate destination, namely, New York, and elsewhere outside of Virginia, was reached; that any other business transacted by the above named vessels was incidental in character and comparatively insignificant in amount; that the said vessels were built and designed for interstate traffic especially and were adjuncts to or branches of the main line of the Old Dominion Steamship Company between New York

and Norfolk; that each and all of the said vessels were regularly enrolled, under the United States laws, outside of the State of Virginia with the name and port of such enrollment painted on
20 the stern of each of them; that the said vessels, though regularly enrolled and licensed for coastwise trade were then used on old established routes upon navigable waters within Virginia as follows, to-wit:

First. The steamer Hampton Roads between Fort Monroe and Hampton and Norfolk.

Second. The steamer Mobjack between points in Mathews and Gloucester counties and Norfolk.

Third. The steamers Luray and Accomac between Smithfield and Norfolk.

Fourth. The steamer Virginia Dare between Suffolk and Norfolk.

Fifth. The steamers Berkeley and Brandon between Richmond and Norfolk; and

The steamers Berkeley and Brandon ply between Richmond and Norfolk. These two steamers were completed in the year 1901 or early in 1902, one of them having been constructed at the William R. Trigg ship yard in the city of Richmond, and the other outside of the State of Virginia. Early in the year 1902, they were placed upon the line between Norfolk and Richmond, one steamer leaving Richmond each evening and arriving in Norfolk each morning, thus giving a night trip every night each way between Richmond and Norfolk. At the time these steamers were placed upon
21 this route and since that time, the Old Dominion Steamship Company has by public advertisement called attention to the fact that these two steamers were especially fitted in the matter of stateroom accommodations for carrying passengers between Richmond and Norfolk, and the said two steamers have since that time been advertising for the carriage of passengers and freight on their route between Richmond and Norfolk, and have been regularly carrying freight and passengers between the said two points in Virginia as well as taking on freight and passengers for further transportation on their ocean steamers at Norfolk. The Old Dominion Steamship Company applied under the revenue laws of the State of Virginia for a license to sell liquor at retail on each of these steamers, and on July 1st, 1902, there was granted through the commissioner of the revenue of the city of Richmond a license to the Old Dominion Steamship Company for the sale of liquor at retail on each of these steamers, said licenses to expire on April 30th, 1903. On or about the same time, the said steamship company complied with the revenue laws of the United States and paid the necessary revenue tax through the custom house at the city of Richmond for the purpose of selling liquor at retail on each of these steamers. In the spring of 1903, the said steamship company, in order to ob-
22 tain licenses to sell liquor at retail on each of these steamers, applied for the same in the city of Richmond and complied with the requirements of section 143 of the new revenue law, ap-

proved April 16th, 1903, and so obtained licenses for the year 1903–1904 to sell liquor at retail on each of these steamers on their route between the city of Richmond and Norfolk, and likewise, on or about the same time, complied with the revenue laws of the United States in the matter of selling liquor at retail on each of the said steamers on said route.

Sixth. The steam tug Germania, which was used in the harbor of Norfolk and Hampton Roads for the purpose of docking the large ocean-going steamers of the Old Dominion Steamship Company and the transferring from different points in those waters freight from connecting lines destined to points outside of Virginia.

And the court, having maturely considered said transcript of the record of the finding aforesaid and the arguments of counsel, is of opinion that the legal *situs* of the vessels and barges assessed for taxation by the finding of the State corporation commission is, for that purpose, within the jurisdiction of the State of Virginia, and that said property is amenable to the tax imposed thereon—notwithstanding the fact that said vessels and barges are owned
23 by a non-resident corporation, that they may have been enrolled under the act of Congress at some port outside the State of Virginia, and that they are engaged, in part, in interstate commerce—and doth so decide and declare. Therefore, it seems to the court here that the finding of the State corporation commission appealed from is without error, and said finding is approved and affirmed. It is further considered by the court that the appellee recover against the appellant thirty dollars damages and its costs by it about its defence expended upon this appeal.

All of which is ordered to be entered upon the order book here, and certified to the State corporation commission, to be entered of record in its order book there, as required by law.

24 In the Supreme Court of Appeals of Virginia, at Richmond.

OLD DOMINION STEAMSHIP COMPANY
v.
COMMONWEALTH OF VIRGINIA.

STATE OF VIRGINIA,
City of Richmond, } *To wit:*

I, H. Stewart Jones, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing printed record contained in sixteen pages and one page of index, and six additional manuscript pages, is a true and perfect copy of the record of the suit aforesaid remaining in the clerk's office of the said court at the city of Richmond, Virginia, upon which said record the case was heard, tried and determined by the court aforesaid.

In witness and attestation whereof I hereunto set my hand and

affix the seal of said court at Richmond, Virginia, on this the 14th day of April, 1904.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

STATE OF VIRGINIA, } *To wit:*
City of Richmond, }

I, James Keith, one of the judges and president of the supreme court of appeals of Virginia, do hereby certify that the attestation of the above record of Old Dominion Steamship Company *vs.* The Commonwealth of Virginia, remaining in the clerk's office of the said court at Richmond, Virginia, made by H. Stewart Jones, the clerk of said court at Richmond, aforesaid, is in due form.

Given under my hand and seal this the 14th day of April 1904.

JAMES KEITH, [SEAL.]
President Supreme Court of Appeals of Virginia, at Richmond.

25 The Honorable James Keith, president supreme court of appeals of Virginia:

OLD DOMINION STEAMSHIP COMPANY }
v.
COMMONWEALTH OF VIRGINIA. }

Upon appeal from a finding of the State corporation commission, entered on the — day of November, 1903, declaring the steamers Mobjack, Accomac, Hampton Roads, Luray, Virginia Dare, Brandon, and Berkley, and the steam tug Germania and seven barges, property of appellant, taxable under the laws of the State of Virginia, and imposing a property tax thereon for the year 1903.

Assignment of Errors.

Old Dominion Steamship Company, the plaintiff in error, comes and files herewith its petition for a writ of error, and says that there are errors in the record and proceedings of the above entitled cause and makes the following assignment.

The supreme court of appeals of Virginia erred in affirming the finding of the State corporation commission of Virginia, that the vessels of the plaintiff were taxable by the State of Virginia and assessing the same for such taxation. And in holding such assessment of the plaintiff's vessels not to be in conflict with the Constitution of the United States, and of laws made in pursuance thereof.

The validity of the said finding of said commission and taxation

of said vessels, was controverted and drawn in question by the plaintiff in error on the ground of the same being repugnant
26 to the Constitution of the United States and to laws of Congress made in pursuance thereof, and in contravention thereof, in the following particulars:

First. The supreme court of appeals erred in affirming the finding of the State corporation commission and in holding that the legal *situs* of the vessel property of the Old Dominion Steamship Company in the proceedings mentioned and assessed for taxation by the said commission was for that purpose within the State of Virginia, and amenable to the tax imposed thereon, notwithstanding said vessels were owned by the plaintiff, a corporation of the State of Delaware and a citizen of the United States, and duly enrolled outside the State of Virginia pursuant to the acts of Congress, licensed for the coasting trade, and engaged in interstate commerce, which holding and decision are in violation of sections 4131, 4141, 4311 and 4312 of the Revised Statutes of the United States.

Second. The said final judgment and decision of the said supreme court of appeals is erroneous in not holding the said taxation of the vessels of the plaintiff in error, to be a regulation of interstate commerce by the State of Virginia, in violation of, and repugnant to, article I, section 8, clause 3, of the Constitution of the United States, which gives to Congress the power to regulate commerce among the several States and with the Indian tribes.

For which errors the plaintiff in error, Old Dominion Steamship Company, prays that the judgment of the supreme court of appeals of Virginia, dated the 17th day of March, 1904, affirming the
27 finding and action of the State corporation commission in assessing the said vessels of the said plaintiff in error for taxation by the State of Virginia, be reversed and a judgment entered for the plaintiff and for costs.

WM. H. WHITE,
Attorney for Old Dominion Steamship Company.

28 The Hon. James E. Keith, president supreme court of appeals of Virginia.

OLD DOMINION STEAMSHIP COMPANY
vs.
COMMONWEALTH OF VIRGINIA.

Upon appeal from a finding of the State corporation commission, entered on the — day of November, 1903, declaring the steamers Mobjack, Accomac, Hampton Roads, Luray, Virginia Dare, Brandon, and Berkley, and the steam tug Germaina and seven barges, property of appellant, taxable under the laws of the State of Virginia, and imposing a property tax thereon for the year 1903.

Petition for Writ of Error.

The Old Dominion Steamship Company considering itself aggrieved by the final decision of the supreme court of appeals of Virginia, rendered on the 17th day of March, 1904, in this cause, in affirming the finding of the State corporation commission and declaring the vessels of the petitioner in said cause mentioned, liable to the tax imposed thereon by the Commonwealth of Virginia, hereby prays a writ of error from the said decision and judgment to the Supreme Court of the United States. Assignment of errors is hereto attached.

WM. H. WHITE,
Attorney for Old Dominion Steamship Company, Petitioner.

Supreme Court of Appeals of Virginia.

Let the writ of error issue upon the execution of a bond by the plaintiff, Old Dominion Steamship Company, to the defendant, Commonwealth of Virginia, in the sum of three thousand ($3,000) dollars; said bond when approved to act as a supersedeas.

Dated April 13th, 1904

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

29 Copy.

Supreme Court of the United States.

OLD DOMINION STEAMSHIP COMPANY
vs.
COMMONWEALTH OF VIRGINIA.

Bond.

Know all men by these presents, that we, the Old Dominion Steamship Company, a corporation organized under the laws of the State of Delaware, as principal, and the American Surety Company of New York, a corporation duly incorporated under the laws of the State of New York, of 100 Broadway, city, county and State of New York, as surety, are held and firmly bound unto the Commonwealth of Virginia, in the sum of three thousand dollars ($3,000.) to be paid to the said Commonwealth of Virginia, to which payment, well and truly to be made, we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 13th day of April, A. D. 1904.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the supreme court of appeals of Virginia:

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

OLD DOMINION STEAMSHIP COMPANY,
By JOHN F. MAYER, *Its Agent.*
[CORPORATE SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By LEONARD DAMMANN,
Resident Vice President.

Attest: ROB'T LE MASURIER,
Resident Ass't Secretary.

The above is approved

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

30 The original of the foregoing supersedeas bond was lodged with the clerk of the supreme court of appeals of Virginia on April 13th 1904, and the following endorsement made thereon: Bond filed 13th day of April 1904.

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

[Endorsed:] Bond filed April 13, 1904.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of appeals of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals of Virginia before you, at Richmond, at the March term 1904 thereof, between Old Dominion Steamship Company, plaintiff and Commonwealth of Virginia defendant, a manifest error hath happened, to the great damage of the said plaintiff Old Dominion Steamship Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller Chief Justice of the United States, the 13th day of April, in the year of our Lord one thousand nine hundred and four.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States
for the Eastern District of Virginia,
By JOSEPH P. BRADY,
Deputy Clerk.

Allowed
JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

[Endorsed:] Old Dominion S. S. Co. *v.* Commonwealth. Writ of error. Filed April 13, 1904.

32 The original of the foregoing writ of error was lodged with the clerk of the supreme court of appeals of Virginia on the 13th day of April 1904, and also at the same time and place a copy thereof for the defendant Commonwealth of Virginia. The following endorsement was made upon the said original writ and upon the copy: Writ of error. Filed April 13th, 1904.

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

33 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Commonwealth of Virginia, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of appeals of Virginia, wherein you are defendant and Old Dominion Steamship Company is plaintiff in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the chief justice of the supreme court of appeals of Virginia, this 14th day of April, 1904.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Attest: H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

Service accepted April 14th, 1904.
WILLIAM A. ANDERSON,
Attorney General for the Commonwealth of Virginia.

34 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Appeals of Virginia, } *ss:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said supreme court of appeals, in the city of Richmond, this 14th day of April, 1904.

Fee for record $14.00.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia,
at Richmond.

Endorsed on cover: File No. 19,306. Virginia supreme court of appeals. Term No. 231. Old Dominion Steamship Company, plaintiff in error, *vs.* Commonwealth of Virginia. Filed April 22nd, 1904. File No. 19,306.